

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10993 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge? No :

SHIVRAM MALLU

Versus

DISTRICT COLLECTOR

Appearance:

MR TR MISHRA for Petitioner

Mr.KODEKAR, A.G.P. for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/07/1999

ORAL JUDGEMENT

1. This petition can be finally disposed of at the admission stage.

2. Notice of this petition was issued on 5.2.1999 returnable on 4.3.1999. On 5.3.1999 learned A.G.P. requested for time to file reply. The matter was

adjourned to 19.3.1999. It was then adjourned to 6.4.1999, 15.4.1999, 23.4.1999 and 18.6.1999. During these intervals no counter Affidavit was filed by the respondent No.1. On 22.6.1999 it was noticed that the respondent No.2 was not served. Fresh notice was issued for respondent No.2 returnable on 22.7.1999. Direct Service was permitted. Learned Counsel for the petitioner Mr.T.R.Mishra states that respondent No.2 has been served, but Affidavit of direct service could not be filed. He further states that the respondent No.2 is only proforma respondent and no relief has been sought against him. This statement is contrary to relief (B) in the writ petition where specific relief has been sought for a direction to the respondent No.2 to deposit the amount ordered by the Labour Court in Recovery Certificate, Annexure : B. Since the Affidavit of Direct Service on Respondent No.2 has not been filed this relief (B) cannot be granted.

3. The averments in the writ petition are that the petitioner filed Recovery Application No.105/85 claiming arrears of pay, leave salary, wages, weekly off, and other benefits u/s.33-C(ii) of the Industrial Disputes Act, 1947. The Labour Court allowed the application on 10.3.1993 and directed the respondent No.2 to pay a sum of Rs.23,141.45 ps. to the petitioner within 30 days of receipt of order and was further directed to pay cost amounting to Rs.50/- to the petitioner vide Annexure : A. The amount was not deposited nor paid to the petitioner hence he applied for Recovery Certificate which was to be issued to the District Collector, Ahmedabad respondent No.1 for recovery as arrears of land revenue vide Annexure : B. Thereafter the petitioner made representations on regular intervals and persued the matter, but with no result. It is on account of this inaction of the respondent No.1 that this petition had to be filed by the petitioner.

4. Learned A.G.P. has now again requested for time to file Counter Affidavit. Sufficient time was already granted at his disposal right from 5.3.1999 till date, but no counter Affidavit has been filed and as such this request is turned down. As such the averments made in the petition have to be accepted and therefore mandamus can be issued against the respondent No.1 i.e. District Collector, Ahmedabad to recover the amount of Rs.23,141.45 ps. mentioned in the Recovery Certificate positively within a period of two months from the date of production of copy of this order.

5. The petition is therefore allowed. The respondent

No.1 is directed to recover the amount mentioned in the Recovery Certificate within a period of two months. No order as to costs.

sd/-

Date : July 22, 1999 (D. C. Srivastava, J.)

sas